

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE**

STATE OF WASHINGTON,)	
)	
Respondent,)	No. 61378-2-I
)	
v.)	UNPUBLISHED OPINION
)	
TAIWANDRIC RUSSELL,)	
)	
Appellant.)	FILED: September 28, 2009

Schindler, C.J. — In granting a suspended sentence for a misdemeanor conviction, the court has discretion to impose alcohol and drug-related conditions that are reasonably related to preventing future crimes. We reject Taiwandric Russell’s argument that the requirement to obtain a substance abuse evaluation and the conditions prohibiting alcohol and drug use are not supported by the record, and affirm.

A jury convicted Russell of one count of assault in the second degree, one count of tampering with a witness, and four counts of misdemeanor violation of a court order; King County Cause No. 07-1-10890-1 KNT. Thereafter, the State agreed to reduce a pending assault in the second degree charge against Russell to assault in

the fourth degree in King County Cause No. 07-1-09469-I KNT. Russell entered into an Alford¹ plea to the amended information.

Appendix B to the Plea Agreement sets forth Russell's criminal history. Russell's criminal history includes previous felony convictions for violation of the Uniform Substances Act (VUCSA), chapter 69.40 RCW, in 2006 and 1998, and misdemeanor convictions for possession of marijuana in 2004, driving under the influence in 2003, and drug trafficking in 1997.

The Plea Agreement sets forth the State's sentencing recommendation. The State recommended a 12-month suspended sentence with credit for time served and 24 months of probation with a number of conditions, including "Do not possess or use ALCOHOL OR NON-PRESCRIBED DRUGS" and "Obtain a SUBSTANCE ABUSE EVALUATION and comply with recommended TREATMENT program." The Plea Agreement expressly notes that Russell did not agree to the State's sentencing recommendation.

In his presentence memorandum, Russell argued that "there is no basis for this Court to order a substance abuse evaluation" and asserted that there were "no reasonable grounds in this case to establish that alcohol influenced this offense" based on the certificate of probable cause.

At the sentencing hearing on March 7, 2008, Russell's attorney argued that based on the certification for determination for probable cause, "it's hard to tell if

¹ North Carolina v. Alford, 400 U.S. 25, 91 S. Ct. 160, 27 .Ed.2d 162 (1970).

alcohol or drugs was the issue that was responsible or had a nexus to the crime that Mr. Russell committed. And my position is not to impose the substance abuse evaluation unless there is a nexus at this point.”

The court rejected Russell’s argument.

You have raised the issue of the SRA’s [Sentencing Reform Act of 1981, chapter 9.94A RCW] requirement to have conditions be crime-related and certainly that is a requirement of the SRA. It is not, to my understanding, a requirement for misdemeanors. And so I believe that, regardless of the issue that you are raising on the misdemeanor, on the misdemeanor counts, I can impose that condition.

The court imposed a 12-month suspended sentence with 24 months of probation with conditions, including a requirement to obtain a substance abuse evaluation and conditions prohibiting drug and alcohol use.

The conditions set forth in the judgment and sentence state:

The defendant shall not purchase, possess, or use any alcohol [or] controlled substance (without a lawful prescription). The defendant shall submit to urinalysis and/or breath testing as required by the Department of Corrections and submit to search of person, vehicle or home by a Community Corrections Officer upon reasonable suspicion of violation;

The defendant shall obtain a substance abuse evaluation and follow all treatment recommendations; See App. I. ²

DECISION

We review sentencing conditions for abuse of discretion. State v. Riley, 121 Wn.2d 22, 36-37, 846 P.2d 1365 (1993). A court abuses its discretion if its decision is

² The Appendix provides: “Within 30 days of release from custody, obtain a chemical dependency evaluation. If treatment is recommended, enter at the next available opening and successfully complete such program.”

manifestly unreasonable or exercised on untenable grounds or reasons. State ex rel. Carroll v. Junker, 79 Wn.2d 12, 26, 482 P.2d 775 (1971).

Under RCW 9.95.210 and RCW 9.95.230, the superior court has the authority to grant probation. City of Spokane v. Del Donnie Marquette, 146 Wn.2d 124, 129, 43 P.3d 502 (2002).³ The court's decision to grant a suspended sentence and impose probation for a misdemeanor conviction is "not a matter of right but a matter of grace, privilege, or clemency" that may be "granted to the deserving, and withheld from the undeserving." State v. Williams, 97 Wn. App. 257, 263, 983 P.2d 687 (1999) (quoting State v. Farmer, 39 Wn.2d 675, 679, 237 P.2d 734 (1951)). The court has the discretion to impose conditions that "bear a reasonable relation to the defendant's duty to make restitution or that tend to prevent the future commission of crimes." Williams, 97 Wn. at 263 (citing State v. Summers, 60 Wn.2d 702, 707, 375 P.2d 143 (1962)).⁴

³ RCW 9.95.210(1) states:

In granting probation, the superior court may suspend the imposition or the execution of the sentence and may direct that the suspension may continue upon such conditions and for such time as it shall designate, not exceeding the maximum term of sentence or two years, whichever is longer.

RCW 9.95.230 states:

The court shall have authority at any time prior to the entry of an order terminating probation to (1) revoke, modify, or change its order of suspension of imposition or execution of sentence; (2) it may at any time, when the ends of justice will be subserved thereby, and when the reformation of the probationer shall warrant it, terminate the period of probation, and discharge the person so held.

⁴ The Sentencing Reform Act of 1981, chapter 9.94A RCW, which requires that conditions of community supervision relate directly to the crime, does not apply to misdemeanors. Williams, 97 Wn. App. at 263.

Russell relies on Williams to argue that because there is no factual basis, no reasonable relationship exists that allows imposition of the conditions requiring a substance abuse evaluation and prohibiting drug and alcohol use.⁵ In Williams, 18-year-old Williams pleaded guilty to five misdemeanors. The district court granted probation and ordered the probation department to set the conditions for probation. There was no evidence in the record that substance abuse played a role in the crimes. Nonetheless, the probation department ordered Williams to not use alcohol or drugs and submit to alcohol and drug testing. The court later revoked probation based on violations of the conditions. On appeal, Williams challenged the drug and alcohol conditions and argued the court unlawfully delegated its authority to the probation department. We held that the court had the authority to impose a condition that is not directly related to the misdemeanor if the condition “tends to prevent future commission of crimes.” Williams, 97 Wn. App. at 263. In addressing the conditions related to the potential use of drugs and alcohol, the court held the conditions were “merely an extension of the more general probationary requirement to conduct himself in a lawful manner.” Williams, 97 Wn. App. at 263.⁶

Here, based on Russell’s undisputed criminal history, the conditions the court imposed for probation are reasonably related to preventing the commission of future

⁵ Russell concedes the requirement under the Sentencing Reform Act, chapter 9.94A RCW, that community supervisions conditions must relate to the crime, does not apply to a misdemeanor.

⁶ Russell also cites Summers, 60 Wn.2d at 707 to argue that the conditions are unrelated to the facts of his case. In Summers, the trial court imposed conditions that required the offender to support his own children. On appeal, the court concluded the trial court abused its discretion because supporting the offender’s own children is a moral rather than legal obligation and has no bearing on restitution or future crimes. Summers, 60 Wn.2d at 707. Here, unlike in Summers, the conditions the court imposed on Russell relate to preventing future crime.

crimes. We conclude the court did not abuse its discretion in requiring Russell to

obtain a substance evaluation and refrain from alcohol and drug use, and affirm.

Schindler, CT

WE CONCUR:

Appelwick, J.

Ajda, J.